

regard to the layout of the restaurant, we noted that the path taken by the deceased and followed by the appellant was the only path that led to the only exit of the restaurant. It was not an unreasonable inference in our view to think that both of them had in fact intended to get out of the restaurant. Certainly, it was the natural thing for the appellant himself to have done so. There were still at least two other members of the deceased's gang who were near table 2 in the restaurant and the appellant must have feared that they might attack him. We refer to the fact that the appellant was seen holding up his knife as though attempting to stab the deceased again. It seemed to us that it was also not an unreasonable inference that in holding up the knife and making his getaway, he was adopting a threatening posture merely to keep the deceased and the other members of the gang at bay. He wanted to get away, as in fact, he did.

In these circumstances, we came to the conclusion that the appellant had stabbed the deceased without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. He had only inflicted one blow. Although it turned out to be fatal, we could not say that in all the circumstances of the case, he had taken undue advantage, seeing that he was dangerously outnumbered, nor could we say that he had acted in a cruel or unusual manner.

We accordingly allowed the appeal and convicted the appellant of the lesser offence of culpable homicide not amounting to murder.

Appeal allowed.

Solicitors: *Palakrishnan & Partners.*

Reported by *Mathavan Devadas*

A **Ramachandran & Anor v Public Prosecutor**

COURT OF CRIMINAL APPEAL (SINGAPORE) — CRIMINAL APPEAL NO 7 OF 1987
SINNATHURAY, CHUA AND RAJAH JJ
10 JANUARY 1991

B *Criminal Law — Murder — Common intention — No direct evidence of — Court is entitled to infer from circumstantial evidence*

Evidence — Uncorroborated accomplice evidence — Whether court entitled to refer to such evidence — Status of pre-1977 cases

The High Court found that the two appellants had gained admittance to the deceased's flat. The first appellant, Ramachandran, held the deceased by his hands whilst the second appellant, Krishnan, stabbed him with a letter opener that he had brought with him. They then ransacked the flat and made off with various valuables and cash. The High Court was satisfied that both the appellants had agreed to and intended to kill the deceased to prevent him from identifying them. Ramachandran in his statement to the police and to the court claimed that he did not know that Krishnan was armed. However Krishnan's statement to the police had incriminated Ramachandran, stating that Ramachandran had held the deceased's hands whilst he, Krishnan, had stabbed the deceased.

D *Ramachandran appealed on the ground that there was no evidence of common intention on the part of the appellants to commit murder. A further ground was that the court had failed to remind itself of the danger of convicting on accomplice evidence. Krishnan appealed on the ground that as he had disputed that the statement tendered had been signed by him, the court should have sent it for analysis. He also claimed that there was no evidence of common intention.*

Held, dismissing the appeals:

F (1) The law as to accomplice evidence is now contained in s 135 of the Evidence Act (Cap 97, 1985 Ed). It is no longer a requirement for a trial judge to state as part of his reasons that he had warned himself before accepting uncorroborated accomplice evidence. Pre-1977 cases on uncorroborated accomplice evidence no longer represent the law.

G (2) However, it is still incumbent on the trial judge to scrutinize and weigh carefully the uncorroborated evidence of an accomplice before acting on such evidence.

(3) Krishnan was known to the deceased. They had chosen that particular time of day to go the flat as they knew that only the deceased would be in and would be able to let them in. In these circumstances, it is not unreasonable to infer that the appellants knew that if the deceased was left alive, he would surely report them to the police and they would be caught.

H (4) Although the appellants had claimed they only intended to tie up the deceased, they had not brought any material to do so. Nor was there any evidence that they had tried to tie the deceased up.

I (5) The appellants must have known that the deceased would have tried to defend himself. The appellants would thus have come prepared for this, which is why Krishnan armed himself. The court was entitled to infer that Ramachandran knew that Krishnan was armed with the letter opener which he intended to use to stab the deceased.

(6) The reaction of Ramachandran after the stabbing is consistent with him being aware that Krishnan was armed and would use the weapon.

(7) It was not the responsibility of the court to raise the issue of analysis, it should be left to the defence.

Legislation referred to

Evidence Act (Cap 97, 1985 Ed) s 135

Appeal from: Criminal Case No 31 of 1985 (High Court, Singapore)

TV Sukumar for the first appellant.

R Yogendran for the second appellant.

Seng Kwang Boon for the respondent.

Cur Adv Vult

Sinnathuray J (delivering the judgment of the court): The two appellants, Ramachandran and Krishnan, aged 24 and 19 respectively, were convicted on a charge of murder. The victim, a 74-year-old man, Packiria Pillai Krishnasamy ('the deceased'), was killed in his flat at Tah Ching Road on the morning of 27 July 1984.

The relevant facts in this appeal are these. Krishnan, the second appellant, was known to the family of the deceased. In 1981, he had worked as a stall assistant for ten months in a provision stall owned by the deceased's wife. During that period, he also lodged in the flat of the deceased. He had to leave the employment because his performance was found to be unsatisfactory.

Sometime in the middle of 1984, when Krishnan made a casual visit to the stall, the deceased's wife told him to look for a person to work at the stall. Soon after, in the beginning of July 1984 Krishnan called at the flat with Ramachandran, the first appellant, to say that he would recommend Ramachandran's brother to work at the stall.

Nothing happened till 26 July. That evening Krishnan telephoned and made an appointment for Ramachandran to bring his brother for an interview with the deceased the next morning for the job. Krishnan also said in that conversation that he himself would not be there as his passport had expired and he had to leave Singapore by 12 noon, but that he would try to attend.

The next day, the daughter of the deceased returned home from work at about 7.30pm. She found her father dead in the flat. The place had been ransacked. Some jewellery, two ladies' watches, 30 pieces of imitation precious stones and cash of \$1,900 were missing from her cupboard. The police in the course of their investigations found shoe prints of Ramachandran in the flat.

At the trial, Dr Wee Keng Poh, the forensic pathologist, testified that there were five injuries on the deceased. The fatal injury was a stab wound 5 to 8cm deep, which had penetrated the left thyroid gland and had cut the left jugular vein in the neck. The cause of

death was haemorrhage due to this stab wound. Dr Wee said that death would have occurred within a matter of minutes after the fatal wound was inflicted. He estimated that the death had occurred at about 10am on 27 July.

As regards the four other injuries, one scratch mark was on the neck, two superficial stab wounds on the chest and one deep stab wound in the abdomen had cut into the intestines. From these injuries, Dr Wee opined that the deceased was attacked from the front. He also gave as his opinion that all the five injuries could have been inflicted by the letter opener which the police had recovered from the scene. From his observation of the scene, he noted that the flat had been extensively ransacked, but he found no sign of any violent struggle having taken place. He did not find any defensive injuries on the deceased.

About a month after the killing, Ramachandran was arrested by the Malaysian police and brought back to Singapore. Four of the imitation stones were recovered from him. In his voluntary statement made under s 121(6) (now s 122(6) of the Criminal Procedure Code (Cap 68, 1970 Ed), he said:

It is true that on the day in question I was brought to Taman Jurong. I asked the male Indian why he was bringing me there. He said that we could go to his house to steal. The 'his' refers to 'Party's' house. I told him that I did not have any experience in this. He told me that I should stand near the lift whilst he would go up. After a while he came running with blood stains on him. He told me that he had stabbed that man. He invited me to go to the house to look for the knife. I went into the house and searched for it, but I could not find it. He too went with me to the house. Krishna was holding a plastic bag. He said that since we could not find the knife, we had better flee from the place. We left the said place. I went to my room at Jalan Boon Lay Lama. Krishna went to his room there. Krishnan told me to flee to Johore Bahru. He said that he would meet me there later. Until today I have not seen him. I did not commit the murder. The man appeared to be dead when I saw him.

Some 18 months later, on 4 January 1986, Krishnan was arrested, also by the Malaysian police, and handed over to the investigating officer, Inspector T Maniam. That evening Krishnan gave a statement to Inspector Maniam in which he confessed and incriminated Ramachandran.

At the trial, Krishnan challenged the admissibility of the statement. After a hearing on this issue, in a trial-within-a-trial, the learned trial judges, on being satisfied that Krishnan had made the statement voluntarily, admitted the statement. It reads as follows:

I admit that Ramachandran and I committed the murder. I am the one who knocked the door. Both of us went in, Ramachandran kicked the deceased and held both his hands. I then stabbed the deceased. After stabbing the deceased, both Ramachandran and I went into the rooms and looked

for money and jewellery. We found some money and jewellery which we took away with us. I got a gold ring, a pair of gold earrings, and a lady's watch from Ramachandran. I do not know what things Ramachandran took.

Both the accused gave evidence on their own behalf. Ramachandran disclaimed what he had said in his voluntary statement. His evidence was that he and Krishnan had planned to rob the deceased that morning but that they both had no intention to cause any harm to the deceased. Both of them however intended to overpower the deceased and tie him up before ransacking the place for cash and jewellery. The plan was suggested by Krishnan. Ramachandran did not know that Krishnan was armed with a sharp pointed letter opener.

As to what happened in the flat, Ramachandran said that on entering it he grabbed the deceased from the front for Krishnan to tie him up. The deceased struggled and got out of his grip. So he grabbed the deceased from the back. Krishnan then stabbed the deceased in the stomach with the letter opener. On seeing this, Ramachandran said he got frightened. He released his hold of the deceased and ran into a room and searched for valuables and money. When he came out of the room, he saw the deceased lying on the floor near the bedroom door. He ran out of the flat.

Krishnan's version of what had happened in the flat was slightly different. According to him, when Ramachandran was holding the deceased he went into a room to look for something with which to tie up the deceased. Whilst in the room, he turned round and saw that the deceased had freed one of his hands from Ramachandran's grip. He thereupon came out to help Ramachandran. When he got to them, because the deceased kicked him, he stabbed the deceased in the stomach with the letter opener which he had tucked in his trousers. Ramachandran then released his hold on the deceased and went into a room. There followed a struggle between him and the deceased.

Krishnan claimed that during the struggle he suffered a complete loss of memory. He did not know how the deceased was fatally stabbed in the throat. He could only remember that during the struggle there was a tussle between them for the letter opener. The next thing he knew was that he ran away from the deceased into a room to take refuge. The deceased chased him but collapsed on the floor in a pool of blood near the door to the bedroom.

Though he had no knowledge of how the fatal stab wound was caused, Krishnan said in his defence that it could have been inflicted accidentally in the course of the struggle. He explained that he had brought along the letter opener as he wanted to use it to break open locks and cupboard doors. He was unable to say whether Ramachandran knew that he had the letter opener with him.

A At the conclusion of the trial, the learned trial judges disbelieved the evidence of the two appellants. They rejected the versions given by both of them as to what had happened in the flat. They said that they were satisfied beyond a reasonable doubt that what Krishnan had said in his voluntary statement to Inspector Maniam contained the truth. They said:

B We find that having got inside the flat Ramachandran kicked the deceased and held both his hands. Krishnan then stabbed and killed the deceased. After the deceased had collapsed they systematically ransacked the flat and took the jewellery and cash which the daughter of the deceased said were missing from her cupboard. In these circumstances, we infer, as we are driven to, that Ramachandran and Krishnan had agreed and intended to kill the deceased, as their subsequent conduct in the flat clearly showed. The purpose was to ensure that they would not be traced as the deceased knew who Krishnan was. We also find by inference that Ramachandran knew that Krishnan was carrying the letter opener which he knew Krishnan would use to stab the deceased as soon as Ramachandran had held him down. We find they had a common intention to kill the deceased as part of the plan to rob the deceased. In coming to this finding, we have considered the various authorities on common intention cited by counsel for both the accused and the deputy public prosecutor.

Appeal of Ramachandran

E The main ground of appeal on which a submission was made for Ramachandran was that there was no evidence of common intention on his part to kill the deceased or even to cause hurt to him, because Ramachandran did not know that Krishnan was armed with a letter opener. Therefore, Ramachandran did not know that Krishnan would use the letter opener to stab the deceased. His counsel urged upon us that as there was no pre-arranged plan to be armed or to cause any injury to the deceased, for the commission of the robbery, Ramachandran would not be found guilty on the charge of murder.

G Another submission for Ramachandran, not raised in the trial court, but made to us, was that the statement given by Krishnan to Inspector Maniam which had incriminated Ramachandran was not a voluntary statement because he had been in custody for five days and was under some apprehension which counsel said amounted to 'oppression'. What was said to be apprehension was that after Krishnan was handed over to the Singapore police, on his way to the CID from Johore, he was assaulted by two police officers; and, in the CID he was hungry but was not given a meal before the statement was recorded from him.

I The third ground of appeal was that the learned trial judges had not addressed their minds fully to the fact that Krishnan was an accomplice. The complaint was that the learned trial judges had failed to remind themselves of the danger of convicting on accomplice evidence. Counsel cited some authorities for the propo-

sition that if the trial judges had not addressed their minds to this matter, then the conviction must be quashed.

We will deal with the first ground of appeal as the last topic in this judgment. Now, we take the third ground first. We rejected it because the law on accomplice evidence is not in the case law referred to by counsel but is to be found in s 135 of the Evidence Act (Cap 97, 1990 Ed). This section provides as follows:

An accomplice shall be a competent witness against an accused person; and any rule of law or practice whereby at a trial it is obligatory for the court to warn itself about convicting the accused on the uncorroborated testimony of an accomplice is hereby abrogated.

The effect of this section which was amended in 1977 is that it is no longer a requirement for a trial judge to give as part of his reasons that he had warned himself before accepting uncorroborated accomplice evidence to find an accused person guilty on a charge. The reported cases on this subject before 1977 are no longer applicable in Singapore. Having said that, we want to make it clear that it is still incumbent on the trial judge to scrutinize and weigh carefully the uncorroborated evidence of an accomplice before acting on such evidence.

We turn next to the second ground which can also be dealt with shortly. On a perusal of the record of appeal, it is clear to us that if Ramachandran had challenged the admission of the statement of Krishnan at the trial on the ground put forward before us, the trial judges would have had no difficulty in rejecting it. Here we note that Krishnan was in the custody of the Singapore police for only a few hours, from about 4pm to 9pm on 4 January 1986 before he gave his statement to Inspector Maniam and not for a number of days as was suggested by his counsel. As for the allegation of assault in the car by the police whilst in transit from Woodlands to CID, this was investigated at the trial. We agree with the trial judges that there is no truth in this allegation. In the witness box, Krishnan made other wild allegations as well against the police and even against the certificated interpreter, Lalita, which were altogether preposterous. For instance, he said that Lalita had not acted as an interpreter because Inspector Maniam had already written the whole statement out before the interpreter had arrived in his office. Clearly, Krishnan was not a truthful witness. The trial judges rightly found that he had made a voluntary statement, and later, at the close of the trial, they concluded that the statement contained the truth as to what took place in the deceased's flat on that tragic morning.

Appeal of Krishnan

There was not much that counsel could say for Krishnan. There was a feeble submission that as the case against the two appellants was grounded on the admis-

sion of the voluntary statement of Krishnan, and he having denied at the trial that the signatures on the statement were his, the learned trial judges should have sent the document for examination by a document examiner before they came to the conclusion that he had signed the statement. There was, of course, no substance in this, because Krishnan's evidence was so unsatisfactory that the trial judges properly rejected this allegation made by him. In any event, this was not a matter for the trial judges to raise but it was for counsel to have done that.

Another submission, more in the nature of a complaint, was that whereas the learned trial judges had said that 'a struggle between them had not taken place', Dr Wee, the pathologist, had found at the scene 'much disarray in the hall and in the bedroom with drawers and with contents of the cupboard on the floor' from which one inferred that there had been some struggle. When it was shown to counsel that Dr Wee's evidence, properly viewed, pertained to what he had found in the bedroom, and did not refer to the hall where the deceased was stabbed, he abandoned this ground of appeal.

We requested Mr Yogendran, counsel for Krishnan, to submit to us on the subject of common intention. He conceded that there was evidence that the two appellants had planned to rob the deceased and, in order to carry out the robbery, they were going to overpower the deceased and tie him up. However, on the basis of Ramachandran's evidence that he did not know that Krishnan was armed with a letter opener, counsel said there was no common intention proved against him.

Common intention

We are left to deal with the main ground of appeal of Ramachandran. The issue is whether, the prosecution not having produced any direct evidence, there was evidence from which it was reasonable to infer the common intention on the part of the two appellants to cause the death of the deceased in the commission of the robbery.

This requires a reiteration of the facts. Early in the hearing of the appeal counsel for Ramachandran conceded that there was evidence that he and Krishnan had planned to rob the deceased in his flat. Both of them wanted money to return to Malaysia. Krishnan having been a lodger in the flat had told Ramachandran that the deceased's family was rich. So, they made an appointment to go to the flat late in the morning. The time was chosen because they knew that at that time of the day only the deceased would be in. And, as they said, they needed the deceased to be in the flat to let them in. In these circumstances, it is not unreasonable to infer

that the two appellants knew that if the deceased was left alive after the robbery, he would surely report them to the police and they were bound to be caught.

The appellants also said that it was part of their plan that they were going to tie the deceased up, and in order to do so, they would have to use force to overpower him. That was all that they intended to do with the deceased. This evidence of the appellants was not accepted by the trial judges, for as they observed, the appellants did not bring along with them any material with which to tie up the deceased. Afterwards, when they gained entrance into the flat, no effort was made by them to tie up the deceased. In fact there was no evidence of any struggle in the living area of the flat where the deceased was fatally injured.

There is another aspect to this matter. When the appellants went to the flat, they must have known that the deceased would have either evaded or defended himself from being immobilized. One would have expected that the appellants would have come prepared for this eventuality. Thus it was that Krishnan came armed with the letter opener. He had it carefully tucked in his trousers, probably in his waistband, under his shirt. In the witness box he was pointedly asked by counsel for Ramachandran:

Q: Now, did you tell the first accused that you had taken the letter opener with you?

A: I can't remember whether I had told the first accused or not.

Clearly, this was an evasive answer. It is inconceivable to us that whilst Krishnan had discussed the plans for the robbery with Ramachandran he did not tell Ramachandran of the weapon he would take with him. In our view, the trial judges were entitled to infer that 'Ramachandran knew that Krishnan was carrying the letter opener which he knew Krishnan would use to stab the deceased as soon as Ramachandran held him down'.

That was indeed what took place in the flat. On his own evidence, Ramachandran said he grabbed the deceased from the back, and Krishnan stabbed him. Though both of them said that the stab wound was inflicted in the abdomen, we agree with the trial judges, that on the evidence of Dr Wee Keng Poh, the forensic pathologist, the first stab wound was deliberately struck in the neck of the deceased and, as was said by Dr Wee, this was done to 'silence' the deceased. After that, instead of expressing surprise or shock, or restraining Krishnan from further stabbing the deceased or perhaps assisting the deceased in some way, any or all of which would have been a natural reaction had Ramachandran not known that Krishnan was armed with a weapon, Ramachandran released the deceased and ran into the room to ransack it and search for valuables and money. This course of conduct by Ramachandran was consistent with the fact that he knew that Krishnan was armed

A with the letter opener and that it would be used in the commission of the robbery. On the analysis we have made, it is beyond doubt that there was a common intention on the part of the two appellants to cause hurt to the deceased which in the ordinary course of nature had caused his death.

B For these reasons the appeal of the two appellants is dismissed.

Appeal dismissed.

Solicitors: *Sukumar & Teo; Yogen & Partners.*

C Reported by *S Surenthiraraj*

Mohd Sainudin bin Ahmad v Consolidated Hotels Ltd & Anor

D COURT OF APPEAL (SINGAPORE) — CIVIL APPEAL NO 3 OF 1985

LAI KEW CHAI, CHAN SEK KEONG AND RAJAH JJ
30 DECEMBER 1990

Tort — Negligence — Occupier — Whether owners of site were occupiers of or had control over site — Owners engaging contractor and architect to carry out development of site — Duty of care of owners of site to third parties discharged by employment of independent contractors — Liability of independent contractors

Tort — Negligence — Unsafe system of work or current operations — Owners of site engaging independent contractor — Operations of independent contractor not unusually dangerous or hazardous

F The plaintiff was injured by a falling brick while working on a construction site. The first defendants were owners of the site. They had engaged a main contractor to erect a building on the site. Possession was given to the contractor to carry out the works. The first defendant also appointed an architectural firm. The second defendant was the sub-contractor of the main contractor and had employed the plaintiff.

G The liability of the first defendants was put on two grounds: (1) they were occupiers of or had control of the site in that they had engaged architects and other personnel to supervise the construction and the architect had powers to give instructions to the main contractor; (2) the first defendants were liable for the negligence of the main contractor as the duty of care to the plaintiff was not in the circumstances delegable. The plaintiff's claim was dismissed by the High Court. [See [1989] 1 MLJ 297.]

H Held, dismissing the plaintiff's appeal:

I (1) The first defendants were not in law and in fact the occupiers of the site or had control of the site. Their supervisors were only there to see that the work was properly done in accordance with the terms of the contract. The occupiers were the main contractors, who had possession of and full control over the site and it was they who had invited the second defendant and his employees to come onto the site.

(2) The architects were independent contractors and not agents of the first defendants, and any control which they might have by virtue of their position could not be said to be the control of the first defendants.